

**301 APPROVAL OF EXCEPTIONS BY HEADQUARTERS DIVISION OF DESIGN, CHIEF**

This Chapter is presented for the convenience of the applicant and public. The material is repeated from the Project Development and Procedures Manual (PDPM) and in the case of discrepancy the PDPM will take precedent.

The Division of Design, Chief, shall review and approve exceptions to Statewide policies and mandatory design standards that govern encroachments and access to encroachments within the State highway right of way. The Division of Design, Chief, has delegated approval of advisory design standards to the District Directors.

The Division of Design, Chief, is responsible for establishing procedures and guidelines governing the preparation of specific requests for variances and exceptions and the information that must be included in a request. Standard practice is to process all applications from written requests submitted to the Division of Design, Chief. Prior approval is required if personal appearances by district personnel or the applicant are necessary. Encroachment proposals listed in Sections 302 and 303 are to be submitted with district recommendations signed by the District Division Chiefs of Project Development, Right of Way, Traffic Operations, and Maintenance. Requests submitted to the Division of Design, Chief, for consideration of exceptions shall include the items listed in Table 3.1.

When possible, encroachment exceptions on the same project should be submitted in one presentation to allow a correct decision. If it is not possible to submit one presentation, the transmittal letter should explain fully why the cases must be submitted separately. Address all correspondence to the attention of the Division of Design, Chief.

**302 ENCROACHMENTS WITHIN ANY STATE HIGHWAY RIGHT OF WAY**

Requests for the following encroachments shall be submitted by Districts to the Division of Design, Chief:

1. Facilities that limit use of the right of way and/or may add to Caltrans' costs in future construction.
2. Changes in facilities approved previously by the Division of Design, Chief, when the proposed changes alter the conditions under which the original encroachment was approved.
3. Any grading, removal of cut material or placement of fill material within any right of way.
4. Encroachments associated with toll road demonstration projects.
5. Placing utility facilities within the median area of any State highway.
6. Allowing utilities to remain in an existing tunnel or tube that is incorporated into a new highway improvement.
7. Exceptions or changes to the standards described in Chapter 6.
8. Exceptions to high and low policies.

9. Drainage diversions.
10. Groundwater disposal.
11. Longitudinal private pipelines carrying gas, oil, or other flammable fluids that are operated under franchises with local agencies.
12. Locally franchised privately owned longitudinal facilities that are not dedicated for public use.

### **303 ENCROACHMENTS WITHIN FREEWAY AND EXPRESSWAY RIGHT OF WAY**

The Division of Design, Chief is authorized by the Director, Caltrans to make determinations and rule on all matters regarding installation of encroachments on freeways and expressways, as established pursuant to Streets and Highways Code section 250, et seq. Matters concerning encroachments on conventional highways are delegated to the districts except as indicated under Section 302.

Requests for the following encroachments are submitted by Districts to the Division of Design, Chief:

1. Encroachments requiring maintenance within the access control lines of freeways and expressways. This includes those installations created by rearrangement of existing facilities and those requested by utility owners or others under encroachment permit.
2. Longitudinal encroachments within the access control lines of freeways and expressways and on bridges other than highway overcrossing structures. Included are those longitudinal encroachments created by rearrangement of existing facilities, and those requested by utility owners under encroachment permits, including fiber optics facilities.
3. Longitudinal encroachments within a conventional highway that is upgraded to a freeway and remain within the access control lines, the utility facilities will normally be relocated outside the access control. When compelling reasons require such facilities to remain within the access control, the District must submit a request for exception to this policy, for each facility.
4. Encroachments requiring temporary or permanent access to or from through traffic lanes on freeways and expressways.
5. Encroachments involving installation of locked gates in freeway and expressway fences for other than Caltrans' use (see the Highway Design Manual).
6. Temporary use of controlled access right of way by private individuals or developers for grading.
7. Utility facilities that cross freeways should be as normal as possible to the freeway centerline. Facilities that are skewed greater than thirty degrees (30°) from the normal must have approval as a longitudinal encroachment.

**Table 3.1**  
**Items to Be Included with Requests for Exceptions**

Number of Copies	<ol style="list-style-type: none"> <li>1. Normally, submit three copies of each request, with attachments.</li> <li>2. One additional copy shall be submitted if the encroachment involves a bridge or tunnel.</li> </ol>
<b>General Information</b>	<ol style="list-style-type: none"> <li>1. District, county, route, PM, project scope, cost, and schedule.</li> <li>2. Accident history (if applicable).</li> <li>3. If applicable, proof of prior or superior property rights, such as: fee ownership, easements, Joint Use Agreements (JUA), or Consent to Common Use Agreements (CCUA). Prior rights must be confirmed by the District Utilities Coordinator.</li> <li>4. Is the highway an eligible or officially designated Scenic highway? If so, submit a letter from the Local Agency stating that potential visual impacts from the proposed projects are acknowledged.</li> </ol>
<b>Materials</b>	<p>The following documents are required for a district to start the review process and consider the request. [All items should be included, and action may be delayed until such information is furnished. Fold all attachments to 8.5" x 11"].</p> <ol style="list-style-type: none"> <li>1. A statement that the district considered a lease arrangement under Air Space Development.</li> <li>2. An index map. This map should be a print of a small scale key map outlining the general alignment of the freeway, crossroads, frontage roads, ramps, and the major geographic features.</li> <li>3. A plan [ 50 to 200 scale, should be U.S. Customary Units (1 : 600 to 2400 universal scale)] showing a geographic outline of the following: <ul style="list-style-type: none"> <li>• The pavement and shoulder edges of the freeway, expressway or highway, crossroads, collector roads, and ramps. It also should show all adjacent roads or streets, including proposed or existing frontage roads to which the facilities may be reasonably moved.</li> <li>• Right of way and access denial lines.</li> <li>• Present and proposed location of utilities, and physical features that affect the proposed location. (Use a dashed colored line to show existing facilities and a solid line in the same color for relocated position of the facility.)</li> <li>• Trace of slope catch points.</li> <li>• Fencing and location of locked gates where access is proposed.</li> <li>• Location of existing drainage facilities.</li> <li>• Other features, such as topography, where pertinent.</li> <li>• The plan need not be a special drawing; copies of project drawings are suitable. Whenever feasible, the plan should be an 11 inch high strip map as long as necessary to show the entire encroachment. However, separate sheets will suffice.</li> </ul> </li> <li>4. The Interstate number when Interstate projects are involved.</li> <li>5. On controlled access routes, a statement explaining federal participation in right of way purchase or construction cost.</li> <li>6. Profiles, cross sections, and contour grading, if necessary to clarify design.</li> <li>7. A list of all utility facilities located within the limits of a proposed highway project that involve longitudinal encroachments.</li> <li>8. A full explanation of the route and method by which the permittee will gain ingress and egress to the encroaching facility.</li> <li>9. A statement indicating if utility facilities must be relocated to permit construction, and if the utility might be allowed to remain in place during the initial construction but would require relocation for the ultimate construction.</li> <li>10. A statement indicating if allowing a utility facility to remain within the right of way would present a serious safety problem or would cause highway maintenance problems.</li> <li>11. The district's recommendation regarding disposition of a utility facility.</li> <li>12. A full explanation of the available alternatives to the proposed encroachment, together with costs and potential consequences if the requested encroachment is not approved. If a discussion of alternatives is not submitted, the request may be returned as non-responsive.</li> <li>13. Estimated savings to the State that would accrue by proceeding as proposed.</li> <li>14. Status of environmental clearance.</li> <li>15. Concurrence by Structures Maintenance when structures are involved.</li> <li>16. Signature approval of the Division Chiefs for Project Development, Right of Way, Traffic Operations, and Maintenance in the district.</li> </ol>

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**304 RECONSIDERATION AND APPEAL OF PERMIT DENIAL**

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This section outlines the process to follow when an applicant disagrees with the denial of an encroachment permit. There are two opportunities to have the denial decision reversed. The first is a District Director review and the second is the Department Director review (A \$500 deposit is required for Department Director review).

**304.1 Reconsideration Request to the District Director**

If an encroachment permit application is denied, the District Permit Engineer will provide the applicant a denial letter that explains the reasons for denial. To track correspondence and timelines, the denial letter will be sent by certified mail with return receipt. Caltrans needs to track when the applicant receives the denial letter in order to know when to close the file.

An applicant, excluding broadband facility applicant, may request reconsideration of an encroachment permit denial by submitting a *complete* reconsideration request to the District Director. The reconsideration request must be postmarked within 60 calendar days after receiving the permit denial letter. The applicant should submit the package by certified mail with return receipt to verify Caltrans receives the package within the 60 calendar days.

The District Permit Engineer's denial letter must inform the applicant that a written request for reconsideration package is deemed a *complete* submittal on the date the District Director receives all items listed below.

- (a) The reconsideration request letter to the District Director. The letter must contain a detailed explanation of reasons for the reconsideration request.
- (b) Encroachment permit denial signed by the District Permit Engineer.
- (c) Applicant's or the applicant's agent's name, company or organization, telephone number and address.
- (d) Project's location, including district, county, route and post mile.
- (e) Project description, including any pertinent plans or drawings (minimum 3 copies each).
- (f) Applicant's reasons why the proposed project or activity should be permitted.
- (g) Applicant's explanation why the denial by the District Permit Engineer is being challenged.

The District Director or a representative will attempt to resolve issues regarding the application. The reconsideration process does not extend authority to District Directors to approve encroachments that are outside the limits of their authority delegated by the Department's Director, e.g., authorizing freeway encroachments, deviations from mandatory design standards of High and Low Risk policy, and lowering mandatory design standards. Before reaching resolution with the applicant involving such encroachments, the District Director must obtain approval from the appropriate authority in Headquarters.

If permit issues are not resolved by the reconsideration request at the district level, the District Director shall send the applicant a denial letter within 60 calendar days of receipt, by certified mail with return receipt. A copy of the denial letter must also be furnished to Headquarters Encroachment Permits. The denial letter must contain a detailed explanation of the reasons for the denial and advise the applicant that the District's denial may be appealed to the Department's

Director. The applicant and Caltrans may mutually agree, in writing, to extend the time for the reconsideration process.

The District Director's denial letter should also provide the applicant with the following information:

1. The appeal to the Department's Director is the final step in the appeal process.
2. Name and address of the Department's Director in the format shown below:  
(Director's Name)  
Director  
Caltrans  
1120 N Street  
Sacramento, CA 95814

The applicant must submit a *complete* appeal package (see Section 304.2, Appeal Process to Department's Director) to the Department's Director within 60 calendar days after receiving the District Director's denial letter.

### **304.2      Appeal Process to the Department's Director**

An applicant may appeal the District Director's denial of an encroachment permit to the Department's Director within 60 calendar days from the date of receipt of the District Director's denial. The District Director's denial letter must advise the applicant that the written appeal, as a minimum, must contain the following information:

- (a) The appeal letter to the Department's Director. The letter must contain a detailed explanation of reasons for the appeal.
- (b) The reconsideration denial letter signed by the District Director.
- (c) Appellant's or appellant's agent's name, company or organization, telephone number and address.
- (d) Project's location, including district, county, route and post mile.
- (e) Project description, including any pertinent plans or drawings (minimum 3 copies each).
- (f) Appellant's reasons why the proposed project or activity should be permitted.
- (g) Applicant's explanation why the denial by the District Director is being challenged.
- (h) A \$500 deposit towards the appellant's fifty percent (50%) share of the administrative costs of the appeal.
- (i) Notice of whether the applicant requests to stage a presentation to the Department's Director or the Department Director's designee.

The Department's Director or a delegated, independent designee will make a final determination and notify the appellant, in writing, within 60 calendar days after receipt of the written appeal.

When the appeal process is completed, Caltrans will either bill the applicant for any additional administrative costs incurred or refund the applicant any excess from the \$500 deposit.

The administrative charges will begin on the date the appeal is received by the Department's Director and end on the date that a decision letter is sent from the Department's Director to the applicant. Charges will include both District and Headquarters staff time expended on the appeal.